

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 208 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
STATE OF GUJARAT

Versus

PARAMAND DEVJI

-----  
Appearance:

PUBLIC PROSECUTOR for Petitioner

MR HA RAICHURA for Respondent No. 1, 2, 3, 4

-----  
CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/09/98

ORAL JUDGEMENT

1. A sample of black pepper was allegedly collected from the shop of the respondents by Food Inspector-Kamleshkumar Jitendrarai Pandya of Junagadh on 13th October, 1987 at about 10.30 a.m. in presence of Panch-Virendra Shantilal Chandarana. The sample so collected was divided into three parts and sent for analysis to the office of Public Analyst at Bhuj-Kutch, which was received by the said office intact. The Public

Analyst, after analysing the sample, came to a conclusion that the sample of black pepper did not conform to the standards and provisions laid down under the Prevention of Food Adulteration Rules, 1955. The Local Health Authority, Junagadh, thereafter issued notice to the respondents as provided under Section 13(2) of the Prevention of Food Adulteration Act on 10th December, 1987.

2. On the basis of the complaint lodged before the Chief Judicial Magistrate, Junagadh, the learned Magistrate, proceeded with the trial after framing charge against the accused persons. The accused persons pleaded not guilty and expressed their desire to face the trial.

3. The learned Chief Judicial Magistrate, upon considering the evidence on record, came to a conclusion that the prosecution had failed to establish the charge against the accused and, ultimately, acquitted the accused persons. Being aggrieved by the said judgment and order recording acquittal, the State has preferred this appeal.

4. Mr. A.J. Desai, learned Additional Public Prosecutor, who appears for the State, has assailed the judgment and order impugned in this appeal on the grounds stated in the memo of appeal and has urged that the appeal may be allowed and the judgment and order recording acquittal of the respondents may be set aside and the respondents be convicted for the offences with which they are charged.

5. No one appears on behalf of the respondents when called out repeatedly.

6. This Court is taken through the evidence on record by the learned Additional Public Prosecutor. The oral as well as the documentary evidence is closely scrutinized by this Court.

7. Only two witnesses are examined by the prosecution. Kamlesh Jitendra Pandya, at Ex.16, broadly speaking, gives the details about his visiting the shop of the respondents on 13th October, 1987 at about 10.30 a.m. Having introduced himself and having collected sample of black pepper found by him in a tin container. He states that, he called a Panch witness-Virendrabhai and, after following the procedure laid down in the Act and the Rules, collected the samples. He asserts that the Panchnama in this regard was drawn at the place in the presence of the Panch witness and his signature was

also obtained. The sample was sent for analysis to the Public Health Laboratory at Bhuj-Kutch and, according to the report, the sample did not conform to the standards laid down under the Prevention of Food Adulteration Rules, 1955. He has been cross-examined at length. The substance of the cross-examination is that, according to the respondents-original accused persons, the respondents were not trading in black pepper at all. The sample was collected by the complainant from a cloth bag which was left at the shop by some customer of the respondents and despite having been told about the same, the complainant collected the sample. Of course, the complainant has denied these suggestions.

8. The second evidence is that of Panch-Virendra Shantilal. This witness states that he was called at the shop of the respondents by the Food Inspector, Mr. Pandya and sample was collected. But he is not able to state as to how many samples were collected. He admits to have signed the Panchnama and the slips on the container of the sample. But during cross-examination, he states that the sample was collected from a cloth bag which also contained some quantity of potatoes and some other packets. He admits in the cross-examination that the man in-charge of the shop had stated that they are not trading in black pepper. He states that the sealing was not done in his presence.

9. The outcome of the oral evidence, therefore, is that the factum of collection of sample is established by the prosecution. But the factum that the sample which was collected by the complainant was of ownership of respondents and was meant for sale or trading is not established beyond reasonable doubt. The collection of sample is established, but not the sealing, as the Panch categorically states that he left the place before the sealing was done. Sealing in such category of cases is an important aspect that requires to be established by the prosecution beyond reasonable doubt. It also transpires from the evidence that the sample was collected not from a tin container as is deposed to by the Food Inspector, but was from a cloth bag and the other contents of the same cloth bag clearly reveal that the black pepper found from that bag could not have been meant for sale by the respondents. Under these circumstances, the very factum of collection of sample, making of Panchnama and sealing of the samples goes under a cloud of doubt.

10. Apart from this, inspection of record indicates that the report of the Public Analyst of Public Health

Laboratory, Bhuj-Kutch, produced on record at Ex.29 indicates that the sample was received on 20th October, 1987, it was inspected on 28th October, 1987 and the report was signed on 6th November, 1987. It also transpires from the said report that the sample was caused to be analysed by the Public Analyst and it, therefore, cannot be necessarily inferred that it was analysed by the person who signed the report. The difference in date of receipt, analysis and signing of the report and non-examination of the person who analysed the sample and prepared the report calls for a serious consideration. It cannot be said that the chances of intermingling of sample and report are ruled out and, therefore, it is unsafe to place reliance on such report. The same view is taken by this Court in Criminal Appeal No.374 of 1987, certified copy of which is shown to me today and, therefore, there appears to be no merit in the appeal. The appeal is, therefore, dismissed.

[ A.L. DAVE, J. ]

gt